

REMARKS/ARGUMENTS

The Office Action of September 27, 2006 has been carefully reviewed and this paper and request for continued examination are Applicants' response thereto. Claims 1-23 are pending in the application. Claims 1-14 and 16-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of U.S. Patent No. 6,639,234 to Badura *et al.* ("Badura"). Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,540,681 to Strul *et al.* ("Strul"). Applicants respectfully request reconsideration in view of the above amendments and the following remarks.

Examiner Interview

Applicants' representatives would like to express their appreciation for the time taken by the Examiner in the Telephone Interview on October 23, 2006, in which the pending claims and cited art were discussed. During the interview Badura was discussed and it was agreed that Badura does not disclose providing a cycle ON timer that is initiated at the beginning of treatment therapy. Possible amendments to the claims related to the cycle ON timer were also discussed. In view of the discussion, Applicants believe the pending claims are in condition for allowance.

Amended Claims

Claims 1 and 11 have been amended.

Claim 1 now recites, in part, "in response to receiving the ON command signal, initiating a cycle ON timer to operate for a predetermined cycle ON time." Support for this is at least found in paragraph 157, pg. 50-51 of the specification as filed, thus no new matter was added.

Claim 11 now recites, in part, "a cycle ON timer within the second component, wherein, in operation, the cycle ON timer is activated in response to the second component receiving the ON command signal." Support for this is at least found in paragraph 157, pg. 50-51 of the specification as filed, thus no new matter was added.

Rejection under 35 U.S.C. §103 – Badura

Claims 1-14 and 16-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Badura. Claims 1 and 11 are independent.

As noted above, independent claim 1 has been amended to clarify their scope. Claim 1

now recites the feature of “in response to receiving the ON command signal, initiating a cycle ON timer to operate for a predetermined cycle ON time.” As noted above, Badura fails to disclose such a feature, thus Badura cannot be said to support a *prima facie* case of obviousness with respect to claim 1. Therefore, claim 1 is patentable in view of Badura.

Claims 2-10 depend from claim 1 and are patentable over Badura for the reasons that claim 1 is patentable and for the additional features recited therein.

Independent claim 11 has been amended to recite “a cycle ON timer within the second component, wherein, in operation, the cycle ON timer is activated in response to the second component receiving the ON command signal.” As discussed above, Badura fails to disclose this feature and therefore fails to support a *prima facie* case of obviousness with regards to claim 11. Consequently, claim 11 is patentable in view of Badura.

Claims 12-14 and 16-23 depend from claim 11 and are patentable over Badura for the reasons that claim 11 is patentable and for the additional features recited therein.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

Rejections of 35 U.S.C. §103 – Strul

Claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Strul. As previously noted in Applicants’ prior response, no proper support has been given for why Strul can be said to render claim 15 obvious. For example, claim 15 has not been alleged to be obvious in view of Badura and in further view of Strul. The Final Office Action alleges that it would have been obvious to “provide a timer for initiating the redundant hardware controls because temperature, power, and impedance have residual energy capacities that diminish with time to allow for a more accurate determination of whether they have been exceeded.” However, no real support was provided to support the alleged obviousness of adding a timer. *See Dystar Textilfarben GmbH & Co. Deutschland KG. v. C.H. Patrick Co.*, 464 F.3d 1356, 1366 (Fed. Cir. 2006) (citing *In re Lee*, 277 F.3d 1338, 1344 (Fed. Cir. 2002), and noting that “[c]onclusory statements such as those here provided do not fulfill the agency's obligation’ to explain all material facts relating to a motivation to combine.”).

In addition, the Office Action has failed to provide any explanation for why it would be obvious to provide a timer with the features recited in claim 11, from which claim 15 depends. Thus, even if it is assumed that the Final Office Action is correct that adding a timer is obvious, the Final Office Action has still not provided sufficient support for a § 103 rejection with respect

to Strul. Applicants note that to provide a *prima facie* cause of obviousness, every single feature of the claim must be disclosed, suggested or taught. Here, the suggestion that it would be obvious to add a timer to Strul fails to support a *prima facie* case of obviousness with respect to claim 15 because such an argument fails to provide support for the suggestion that Strul discloses, suggests or teaches any of the features actually recited in claims 11 or 15.

In addition, Applicants respectfully submit it would not be obvious to adapt the radio frequency ablation method of Strul where the RF energy is controlled based on monitoring temperature and power to include the features recited in claim 15. Therefore, for at least the above reasons, Strul cannot be said to support a *prima facie* case of obviousness with respect to claim 15.

Accordingly, withdrawal of the ground for rejection is respectfully requested. At a minimum, a more complete rejection of claim 15 is required so that Applicants can understand how all the features of claim 15, which includes the features of claim 11, are allegedly disclosed, suggested or taught by Strul.

CONCLUSION

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

Dated: November 27, 2006

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